



BULGARIAN JUDGES ASSOCIATION
Member of the International Association of Judges (IAJ-
UIM)

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Dear Colleagues,

In 2010, the Bulgarian Judges Association (BJA) wrote to the European Association of Judges (EAJ)¹ in the wake of repeated attempts on the part of the executive branch of government to undermine the independence of the judiciary as a whole and influence the progress and outcome of a series of ongoing trials. At the time, the EAJ sent a mission of observers to Bulgaria whose report confirmed that our concerns about political interference in the independence of courts and multiple breaches of the principle of rule of law were not unfounded and that, on the contrary, they were fully corroborated by the interviews and public statements made by senior government officials². We note that in the wake of these events the European Court of Human Rights (ECHR) ruled against the Bulgarian State in seven cases involving a violation of Article 6, paragraph 2 of the Convention (public statements made by the then Minister of Home Affairs in breach of the presumption of innocence). The EAJ report places an emphasis on the need for the Supreme Judicial Council (SJC) to improve the standard and transparency of decision-making on career development matters and defend the rule of law, including by publicly condemning unwarranted attacks against the judiciary and upholding the independence of the magistracy, including that of individual judges.

The BJA has stepped up its efforts to uphold the fundamental principles of the State governed by the rule of law, focusing on the development of a widespread culture of judicial independence and ‘freeing’ the system from undue political influence that undermines its very foundation. Our consistent efforts have met with mounting disapproval and vehement resistance from supporters of the existing *Status quo* and ultimately culminated in the enactment of a legislative proposal aiming to deal a blow to the organisation while discouraging future members and putting pressure on existing ones to leave its ranks.

According to the latest amendment to the Judiciary Act, adopted on 27 July 2016, each new member of the professional associations of judges, prosecutors and investigators must declare his/her membership by filing a dedicated disclosure statement with the Supreme Judicial

¹ www.judgesbg.org/images/Pismo_do_EAS.pdf

² http://www.judgesbg.org/images/EAJ-DELEGATION_REPORT_2011_Final_.pdf

Council³. The rationale of this statutory requirement was meant to ensure compliance with another provision introduced into the law, notably the disclosure of circumstances that are incompatible with the office of magistrate. Membership of a professional association may not — *in and of itself* — be regarded as a form of incompatibility. In this sense the disclosure of such membership is pointless. The rationale of the proposed amendment, as originally conceived, was to ensure the disclosure of the membership of magistrates of secret and/or informal societies (such as, *inter alia*, Masonic lodges). However, as the text of the provision clearly demonstrates, the professional organisations of magistrates were lumped together with fraternities such as freemasonry. At first glance, the requirement for disclosure of professional association membership is hardly an alarming development — such membership is public and magistrates should have no concerns regarding disclosure. However, it fits poorly with the idiosyncrasies of the public environment in Bulgaria. The provision in question effectively limits the freedom of association protected by Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Bulgarian Constitution. This is so because the public condemnation and stigmatisation of the BJA engenders concern among rank and file judges that membership of the organisation can have a detrimental effect on their career and jeopardise their professional development⁴. It is noteworthy that prior to the enactment of the latest series of amendments to the Judiciary Act MEDEL voiced similar concerns in a position addressed to the Bulgarian legislature⁵. The Speaker of Parliament did not publicly disclose the position received nor was it, according to media reports, circulated to the Members of Parliament.

In order to properly explain the situation of our organisation, below is a chronological account of the latest developments explored in two aspects—the activity of the BJA and the reactions against in public statements of SJC members and parliamentarians. This context best demonstrates the *genesis* of the enacted amendments and the aspirations to *neutralise* our

³ **Article 195a(1)** (*New, published in the State Gazette (SG) No 62/2016, effective as from 9 August 2016*) Each judge, prosecutor and investigator, the members of the Supreme Judicial Council, the Inspector-General and the inspectors from the Inspection Service under the jurisdiction of the Supreme Judicial Council, not later than one month as from the date of taking office, shall submit to the respective chamber of the Supreme Judicial Council a statement disclosing their membership of any organisation, including secret and/or informal organisations and societies, not-for-profit organisations and civic associations, based on a model approved by the Supreme Judicial Council. In the event of change in declared circumstances, the statements on file shall be modified accordingly within one month from the date of any such change.

(2) The respective chambers of the Supreme Judicial Council shall keep a public register of the statements of disclosure referred to in paragraph 1.

⁴ This is a literal quote from a letter received from a BJA members, received after the entry into force of the amendments to the Judiciary Act: ‘Dear Sirs, I joined the BJA in 2013 on my own initiative. Since that date I have not kept up-to-date on the payment of membership fees, which according to the Statute of the organisation constitutes grounds for termination of my membership. The latest amendments to the Judiciary Act add yet another reason to believe that my continued association with the organisation and being featured on the list of its members, which is publicly available, is against my professional interests on account of the great deal of negativity towards the organisation. I therefore respectfully request that my membership be terminated with immediate effect on account of external circumstances to which neither the organisation nor I have contributed. Please accept my apology, sincerely yours [...]’. To date we have received three applications for membership termination.

⁵ http://www.medelnet.eu/index.php?option=com_content&view=article&id=308:letter-to-the-president-of-the-bulgarian-national-assembly-regarding-the-proposal-of-amendments-of-the-judicial-system&catid=57&Itemid=179

organisation as a driving force for a meaningful reform of the judiciary and a pillar of judicial independence and the rule of law.

1. Activity of the BJA in the area of judiciary reform and protection of the principles of judicial independence and rule of law

1.1 In the autumn of 2014 the Bulgarian Parliament adopted an updated Strategy for Judiciary Reform. In the European Commission's report on Bulgaria's progress under the cooperation and verification mechanism (CVM) of 28 January 2015 this act of Parliament was hailed as a reason for renewed trust in the country inasmuch, i.e. it was perceived as a promise on the part of the government to take certain actions with foreseeable outcomes. The most important aspect of the efforts intended to set the updated strategy in motion was the launch of a process to amend the national Constitution that would introduced and ensure compliance with the international criteria and standards for independent and democratic justice administration and a State based on the rule of law.

During the spring of 2015, the Ministry of Justice presented a draft Act amending and supplementing the Judiciary Act, which was followed by a Bill on the amendment of the provisions of the national Constitution governing the judiciary, put forth for consideration by Parliament by a group of MPs and intended to ensure the sustainability of the proposed reforms. The most important element of the reform was the division of the Supreme Judicial Council into two chambers of judges and prosecutors and investigators, respectively, along with determining the number and manner of electing their members so as to ensure court independence, prosecutorial autonomy, accountability of the prosecution service in the implementation of State penal policy, removal of the political influence of the executive over the judiciary branch of government and of the influence of prosecutors over judges. The adoption of the Bill required a certain majority in Parliament. Despite the formal declaration of support for the enactment of the proposed amendments, the legislative process for the adoption of the Bill was stilted and subsequently a reworked version that severely limited the scope of proposed changes was resubmitted to Parliament. This second Bill was passed by Parliament at first hearing with a consensus of all political parties, the compromise—as described by some political entities—including a formal enquiry addressed to the European Commission for Democracy through Law (Venice Commission) requesting an opinion on whether the Bill amending and supplementing the Constitution of the Republic of Bulgaria conformed to international standards. The opinion received in response recommended more resolute action, including broadening and deepening of the provisions intended to dismantle the model of undivided authority of the Prosecution Service—a remnant from communist times and a chamber of judges at the Supreme Judicial Council in which judges had a strong majority *versus* the members elected by Parliament⁶.

⁶ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)022-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)022-e)

Disregarding the opinion, by the subsequent vote in December 2015 the Members of Parliament, without relying or providing further justification, adopted provisions that fail to ensure the achievement, in full, of the goals set out on the updated Strategy for judicial reform in Bulgaria as originally conceived. The Supreme Judicial Council was indeed divided into two chambers. However, the composition of the chambers not only failed to change, but reinforced the dominance of prosecutors and of the Prosecutor-General, and the chamber of judges yet again does not conform to the requirement for predominance of judges elected by judges. This development in the efforts to amend the Constitution ultimately caused the Minister of Justice, Mr. Hristo Ivanov, to tender his resignation on the day the Parliament voted on the constitutional amendments.

1.1.1 Prior to the vote on the amendments to the national Constitution, on 7 December 2015 the BJA organised a meeting with non-governmental organisations. As a result of the consultation procedure, which involved 9 NGOs with proven track record and a wealth of experience in judicial reform, a common position was formulated, calling on the National Assembly to adopt the Bill at second reading without further amending, as a minimum, the Bill amending and supplementing the Constitution of the Republic of Bulgaria submitted on 27 July 2015.

1.1.2 On 9 December 2015, BJA members (judges) attended the second reading by Parliamentary of the proposed Bill.

1.1.3 Following the adoption of the amendments to the Constitution and the resignation of the Minister of Justice in protest against the ‘butchered’ constitutional amendments, the SJC organised a procession of judges who left the Palace of Justice in Sofia to face citizens in an unprecedented protest⁷.

1.1.4 On 10 December 2015, the Managing Board of the BJA published an appeal to Bulgarian citizens, explaining the Parliamentary vote that had taken place on 9 December 2015 and its profound implications for each and every citizen⁸.

1.1.5 On 13 December 2015, the Managing Board of the BJA developed and adopted a strategy and proposed concrete actions to be taken by judges across Bulgaria in support of the stilted reform, including the following:

- appeal to all judges, regardless of BJA affiliation, to show solidarity with and call for a meaningful reform by wearing a badge displaying the scales as a symbol of judicial authority, based on a model, as from 14 December 2015;
- appeal to court presidents across Bulgaria to hold Open Doors Days on 16 December 2015 and organise meetings with citizens, representatives of other legal

⁷ <http://www.novinite.com/articles/172206/Sofia+Judges+Protest+over+Changes+to+Bulgaria's+Judicial+Reform>

⁸ <http://www.judgesbg.org/en/component/k2/item/1078-open-letter-in-relation-to-the-vote-by-the-national-assembly-on-09-12-2015-for-the-law-for-amendment-and-annexation-of-the-constitution-of-the-republic-of-bulgaria.html>

professions and law professors on the premises to discuss practical aspects and the importance of the constitutional amendments and the amendments to the Judiciary Act for a stronger and independent judiciary that commands authority and respect and better functioning courts and prosecution services;

- called on all legal professionals in Bulgaria to join the judges at 17:30 h in front of the central entrance of the Palace of Justice in Sofia in order to jointly explain to ordinary Bulgarians the need for a meaningful judicial reform.

The initiative gained wide support across Bulgaria, with 14 courts declaring 16 December 2015 Open Doors Day and organising meetings with citizens.

In addition, many judges were interviewed on TV and radio programmes.

1.1.6 On 15 December 2015, the Managing Board of the BJA published a statements addressed to Bulgarian prosecutors concerning the risk of the substance of debate on the need for a meaningful, in-depth reform to be displaced by efforts to draw an artificial line of division between Bulgarian judges and prosecutors;

1.1.7 On 22 December 2015, the BJA Managing Board published a statements addressed to all Bulgarian magistrates containing reaffirming the commitment of the organisation to continue to actively promote the authority, good governance and independence of Bulgarian magistrates; react to legislative amendments intended to mask the reluctance to bring about a meaningful change; continue its dialogue with citizens to better explain the nature of existing challenges to the rule of law in Bulgaria, with a strong focus on young people; and continue to work side by side with all judges, regardless of whether or not affiliated with the BJA, and seek cooperation with prosecutors and investigators to ensure that the composition of the newly established chambers of the SJC will be determined, i.e. that their members will be elected, jointly with representatives of the professional associations, in accordance with the new rules adopted by Parliament;

1.1.8 On 15 January 2016 we sent an open letter to the European Commission in which we discuss issues relevant to Bulgaria's progress under the Cooperation and Verification Mechanism, and in particular the failure to deliver on the goals of the updated Strategy for judicial reform⁹.

At the time, we received overwhelming international support from the Dutch Foundation Judges for Judges, H.E. the Ambassador of the Kingdom of the Netherlands, Tom van Oosterhout, the Supreme Bar Association, the Dutch Council for the Judiciary and individual courts in the country. Further support was expressed by representatives of civil society, legal professionals

⁹<http://www.judgesbg.org/en/component/k2/item/1098-open-letter-to-the-european-commission-regarding-the-latest-developments-in-bulgaria%E2%80%99s-progress.html>

and members of the academic community who voiced their concern and reiterated and explained the need for an in-depth and meaningful judicial reform¹⁰.

As a result of our efforts and following yet another critical report of the European Commission under the Cooperation and Verification Mechanism, the reform of the judiciary became more widely recognised as a key goal and priority for Bulgarian society. This, in turn, has created an environment of intolerance for imitative reforms and raised public sensitivity to the issue, engendering expectations for the adoption of a Judiciary Act that is truly capable of achieving the goal of an in-depth and meaningful reform of the system. In this sense, the new Minister of Justice, Mrs. Ekaterina Zaharieva, and her team had a certain advantage on taking up office as compared to the outgoing minister.

The BJA was actively involved in the work to develop the reform Bill, nominating its representatives in the various working groups established to aid the Council on the implementation of the updated Strategy for continuation of judicial reform under the jurisdiction of the Ministry of Justice who also participated in the deliberation of the Bill by the Legal Affairs Committee of Parliament. Without wishing to go into unnecessary detail, we would like to outline the positions defended by our organisations that met with the strongest resistance from the advocates of the current model.

- introducing elements of judicial self-governance into the structure and work of courts in order to, at minimum, soften the command and control style of management that has been tolerated for decades to date by restricting some of the powers vested in court presidents who have a strong, albeit informal, influence on the career development of judges;
- broader involvement of judges in court governance through the possibility to nominate candidates for president and give consultative opinions on certain organisational issues;
- a possibility to involve judges in the process of performance evaluation, ensuring that such evaluation is performed on the basis of a single and uniform set of criteria;
- improved process of career development on the basis of clearly defined and objective criteria;
- Improved disciplinary procedures and standards applied in disciplinary proceedings;
- removing the ‘*career incentives*’ for the members of the Supreme Judicial Council and the SJC Inspection Service. The BJA opposed the proposal to automatically promote (i.e. promote without competition) SJC members and inspectors upon their

¹⁰ These are available on the website of the civic initiative *Justice for All*: <http://pravosadiezvavseki.com/>

reappointment in the ranks of the judiciary following the end of their term in office. After heated debate the proposal was rejected;

- An important detail that demonstrates the aggression toward the professional association of judges was the proposal made during the second reading by parliament of the Bill amending and supplementing the Judiciary Act for the funding intended for professional associations to be disbursed by the Supreme Judicial Council with the weak ‘argument’ that some organisations (notably the BJA) enjoyed generous external financing that ensured its representatives had unfettered access to the media on the pretence of speaking for the entire community of judges, while others were devoid of any such forum. The professional associations of magistrates in Bulgaria do not receive any public subsidy or support either from the central government or the Supreme Judicial Council. The organisations are entirely self-financing with their income coming exclusively from two sources — membership fees and project funding. Although our representatives clearly explained this point, all MPs present at the meeting of the Legal Affairs Commission and despite the manifest absurdity of the proposal for membership fees and project financing to be ‘distributed’ by the SJC, a heated and acrimonious discussion ensued.

1.1. In the meantime, the BJA continued its efforts to raise the standard of management and administration of courts and the entire judiciary.

1.1.1. Shortly after being elected, on 27 November 2015, the Managing Board of the BJA submitted a proposal to the SJC for putting in place a mechanism for discussion with professional associations of planned changes of the national judicial map and other matters relevant to the professional status of magistrates. Regrettably, the SJC failed to even consider the proposal;

1.1.2. On 11 December 2015, in a remarkable formal address to the Plenary of the Supreme Court of Cassation on the occasion of the 135th anniversary, the President of the Supreme Court openly criticized the truncated amendments to the Constitution and the manifest reluctance to change the existing *status quo* and called on judges to stand united in their resolve and commitment to reform. The speech delivered by Justice Lozan Panov inspired magistrates, but proved to the dislike of the majority of the members of the Supreme Judicial Council and the Ethical Committee of the Council promptly announced its intention to conduct Justice Panov’s conduct on allegations that it was essentially political in nature. In response, more than 230 judges placed their signatures under Justice Lozanov’s speech and sent it to the SJC. The Ethics Committee of the Council subsequently retreated on its declared intention to carry out an investigation;

- 1.1.3.** In connection with a decision adopted by the SJC on 10 December 2015 to investigate the presidents of three courts on the strength of allegations made by two Council members that they had failed to be notified of private lawsuits filed against them by the court presidents concerned in respect of libellous statements, the BJA, in an open letter addressed to the SJC and the Inspection Service under the Council's jurisdiction, criticised the decision as an intolerable intervention in the work of courts. Being a party to the respective lawsuits, the SJC members should await due service of process in compliance with the procedure laid down in procedural law, and not expect the litigants, albeit court presidents, to notify them informally of the lawsuits brought against them.
- 1.1.4.** In line with its consistently intransigent policy on deciding career matters, the SJC rejected on two consecutive occasions the application of Justice Nelly Kutzkova to be appointed President of Sofia Court of Appeals, despite overwhelming support for her nomination from more than two-thirds of the judges of that court. The SCJ did not consider it necessary to give any reasons for rejecting the application. During the deliberations of received nominations none of the members expressed a negative opinion of the applicant. Despite this, the number of those members who voted to appoint Justice Kutzkova president were fewer than the number of members who verbally declared support for her nomination. This development—*in and of itself*—is proof that the vote of members is not motivated by legitimate arguments, but reflects illicit agreements to support a decision that was ultimately taken by other players. The Supreme Administrative Court revoked the decision of the SJC, having found it to be unsubstantiated on account of the outcome of the vote being contrary to the preceding discussion of the merits of applicants and the fact that none of the Council members had expressed any negativity towards it. The repeat vote was preceded by a public statement in which the Bulgarian Prime Minister, Boyko Borisov, discussing Justice Nelly Kutzkova, said: *'It seems rather a joke to me that certain judges who have held political office in the past are now trying to play the impartiality card'*, adding the following: *'She ran for Vice President. She then suddenly became active, purportedly as a high-level independent judge, but the fact remains that has already been elected or at least has run for office as candidate of the political party'*. During the second vote none of the SJC members spoke against the nomination of Justice Kutzkova or challenged that it conformed to all stated criteria for appointment, including those for professionalism, judicial conduct, managerial skills and integrity. On the contrary, overwhelmingly positive comments were made. At the same time, one SCJ member 'justified' his negative vote, literally repeating the 'objections' of the voiced by the Prime Minister, saying that the

matter at hand was ultimately political in nature and adding the following: *‘The real issue lies elsewhere — and I would like to make this perfectly clear — those hoping to achieve a certain outcome and are orchestrating this whole charade, are anything but friends of hers. Nor are they friends of the judiciary. This is so, and please correct me if I am wrong—this is something that I have learned the hard way in recent years—many people believe, some of them even sincerely so—but ultimately such an appointment is simply a means of furthering one’s career. This is what I do not like’*. This is yet another instance, out of many others, of the SJC refusing to apply a fair and transparent approach when making key appointments and its reluctance to appoint an impartial candidate capable of resisting attempts at interference and countering undue influence. By rejecting a candidate with an immaculate reputation, the SJC furnished further evidence of being compromised to an extent that renders it unfit to perform its key statutory function of being a staunch defender of the independence of the judiciary and making competent and reasoned decisions as opposed to succumbing to outside political pressure. This and other scandalous decisions have prompted the BJA to call for the resignation of its members.

1.1.5. The SJC failed to respond to the escalating smear campaign in certain media against the President of the Supreme Court of Cassation, the newly appointed President of the Sofia City Court and individual judges who are members of the Bulgarian Judges Association. In connection with this, on 17 February 2016 we called on the members of the SJC elected by judges to take the necessary action to ensure that the Council defends the independence of courts and address growing suspicions of unlawful and illegitimate dependencies in the governance of the judiciary.

1.1.6. The SJC also failed to properly investigate (or at the most conducted highly formalistic and cursory checks under strong public pressure) serious and scandalous allegations and suspicions of corruption, trading in influence, unlawful interference of the executive branch of government into the affairs of the judiciary, poor court management, etc.¹¹ In all cases, the BJA has publicly voiced strongly critical opinions, insisting that the SCJ follows proper procedure and a sound approach.

In its 2016 report the European Commission contains an express reference to the actions taken by the Bulgarian Judges Association and its opinions on a host of relevant issues (Footnotes 10,

¹¹ The reports on Bulgaria’s progress under the CVM for 2015 and 2016 contain similar findings, including a list of the most striking cases

http://ec.europa.eu/cvm/docs/com_2016_40_en.pdf

http://ec.europa.eu/cvm/docs/com_2015_36_en.pdf

12, 17 and 18)¹². Furthermore, the following is stated: *‘In regard to judicial independence, it has been encouraging to see Bulgarian judges speaking out in public to support the reform of the judiciary. This is a healthy sign of a new more confident culture developing among Bulgarian magistrates’*¹³. One of the recommendations addressed at Bulgaria in the report on Bulgaria’s progress under the CVM with regard to the reform of the judiciary is to *‘Enact amendments to the Judicial Systems Act in line with the government’s judicial reform strategy, including reforms to give more say to individual judges and prosecutors, and ensure their implementation in close consultation with the judicial authorities’*¹⁴.

The active stance of the organisation and the fact that its positions are recognised by impartial external observers is clearly disliked by certain members of the governing body of the judiciary and politicians. Public rhetoric, which sometimes borders on overt aggression, provides convincing evidence in this regard.

2. Public statements made by members of the Supreme Judicial Council and MPs

Comments made by Galya Georgieva (SJC member) and Sotir Tsatsarov (Prosecutor-General and SJC member by right) on membership of professional associations (SJC meeting of 4 April 2013):

GALYA GEORGIEVA: And, still in connection with the issue at hand, I would like to ask all members of the Council to declare, in appropriate form, for the benefit of other Council members, whether they are members of any non-governmental organisation. More specifically, whether they are members of the governing bodies of such organisations. I call on all colleagues to publicly disclose their affiliations.

KAMEN SITNILSKY (former SJC member, deceased): Do it now? How? In writing or ...?

KALIN KALPAKCHEIV (SJC member): Is this a question about the professional associations of magistrates?

GALYA GEORGIEVA: Yes, now would be a good time to disclose any such membership. I declare that I am not a member of any such organisations or their governing bodies.

SOTIR TSATSAROV: Yes, but you cannot be certain whether your name does not appear on the list of members of such organisations, as mine does. I am not a member, but this is another story.

KAMEN SITNILSKY: We specifically exclude the professional organisations of magistrates.

http://www.vss.justice.bg/root/f/upload/5/protokol13-04_04_2013.pdf

¹² http://ec.europa.eu/cvm/docs/com_2016_40_en.pdf

¹³ http://ec.europa.eu/cvm/docs/com_2016_40_en.pdf - page 10

¹⁴ *Ibid.*, page 11

Interview with Yassen Todorov (SJC member and Chair of the Ethics Committee) commenting on the BJA (4 May 2015): *‘There is this one Foundation, which generously funds certain media and non-governmental organisations. This circle includes the Capital Weekly. And the Bulgarian Judges Association from a long list of NGOs’.*
<http://sofia.topnovini.bg/node/602956>

Yassen Todorov in a TV appearance on bTV (3.12.2015г.): *‘The Bulgarian Judges Association, relying on generous external financing, is practically acting as a political party’.*

<http://www.mediapool.bg/predi-vanevageit-zhenata-na-yasen-todorov-go-mislela-zasmotanyak-news242612.html>

Dimitar Uzunov (SJC member) in a conversation in Haskovo with the President of the Haskovo Provincial Court (29 February 2016): *‘The professional associations are becoming increasingly aggressive. I believe that there is ultimately a hidden agenda – they are beginning to dabble in politics, willing to play along to the tune of certain politicians or political parties. It is complicated.’*

<http://www.legalworld.bg/51223.dimityr-uzunov-ochakval-poveche-rahats-vyv-vss.html>

Galya Georgieva in an interview for the Trud Daily (14 April 2016): *‘I call on professional organisations, notably the Bulgarian Judges Association, and politicians to give a fair and objective assessment of our work to date and refrain from creating problems in the future’.*

<http://trud.bg/article-5430982>

Yassen Todorov in an interview for the Monitor Daily (21 July 2016): *‘Today’s statement of the Council (on the arrest of judges and prosecutors in Turkey) is partially a response to the policy of a professional association that operates, at least in part, as a political entity. I am saying this openly and directly — the Bulgarian Judges Association gives opinions on a number of issues in Bulgaria that are none of its concern, purely political matters. But the reasons for this call for a separate discussion’.*

Note: Mr. Todorov’s statement came in the wake of the debate at the SJC on whether to issue a statement of condemnation in connection with the arrests of Turkish magistrates. The proposal was tabled by several members of the Council and opposed by others. Ultimately, the SJC did issue a statement, which is what Mr. Todorov refers to in the interview. The Bulgarian Judges Association had published a statement of condemnation in support of Turkish magistrates several days earlier.

Çetin Kazak, MP (speech during a plenary sitting of Parliament during which the amendments to the Constitution and the Bill amending and supplementing the Judiciary

Act were discussed, at first reading 29 June 2016¹⁵): ‘Colleagues! Mr. Kirilov, I listened to your statement with great interest and was astounded by your proposition that we vote the proposal and wait and see what happens. There is absolutely no way to know what the effect of the proposed amendments will be in advance. Let us see what happens and only then make adjustments, if necessary. It is already clear that the idea is fraught with risks and I think that the *trial and error* approach is to be avoided at all costs! It is also painfully clear that introducing self-governance is, in and of itself, a major threat to the system and I believe that it is our duty to limit it to the maximum degree at the very outset, defuse the mines we are now planting, so to speak, rather than wait for them to explode and only then admit that we made a mistake. You say that this instrument is a cornerstone of the checks and balances system. What checks and balances? You are granting powers to the general assemblies of courts, in other words to the Bulgarian Judges Association—let us not beat around the bush here—to become openly and legitimately involved in the decision-making process on management and career development issues. How do you expect the checks and balances to work?! How is self-restraint to be ensured? They will be involved, nominate, hear applicants, judge them on the strength of their commitments *vis-à-vis* future work and you expect self-restraint?! There will be no such thing. They will simply usurp the functions of court presidents’.

Çetin Kazak, MP (speech made during a plenary sitting of Parliament in connection with the discussion of the Bill amending and supplementing the Judiciary Act at second reading, 27 July 2016¹⁶): ‘Madam Speaker, Colleagues! I don’t know why but I strongly suspect that we are unreasonably placing the emphasis here on membership of secret societies in order to divert attention and ensure that the majority of MPs remain blind to the real problem underlying this particular provision — in fact, the real problem of the entire Bulgarian magistracy, which is the undue influence of some of its non-secret, rather the opposite, high-profile organisations, including those relying on external financing (not that they are all too willing to admit or disclose this) that currently wield and will continue to wield even stronger influence on the governance of the judiciary, and I mean the professional associations of magistrates, especially some of them.

Having set out to achieve full transparency and given the criticism levied at the current provision according to which membership of all organisations must be disclosed, not to mention the insistence for further clarification by reference to ‘*secret societies*’, etc., and I am convinced that my colleagues sitting in the right wing section of the plenary hall will agree with me, I would like to propose that we revise the provision of Articles 1 and 195a by placing, after the words ‘*not-for-profit government organisations*’ a comma and then insert the text ‘*including the professional organisations referred to in Article 217(1)*’ (the speaker envisages the professional associations of magistrates), in order to remove any lingering doubt whether the organisations in question fit the description or not’.

¹⁵ <http://www.parliament.bg/bg/plenaryst/ns/51/ID/5675>

¹⁶ <http://www.parliament.bg/bg/plenaryst/ns/51/ID/5687>

Yordan Tsonev, MP (speech made during a plenary sitting of Parliament in connection with the discussion of the Bill amending and supplementing the Judiciary Act at second reading, 27 July 2016¹⁷): ‘Madam Minister, Colleagues! We will be voting against Mr. Haytov’s proposal and I would like to explain why here in the plenary hall.

We should make a clear distinction between two things—membership of informal, secret and other organisations in this vein. Such membership must be disclosed and we from the Movement for Rights and Freedoms have voted in favour of the proposal. We believe that both magistrates and we, as politicians for that matter, should make full disclosure.

The matter at issue is membership of professional associations. And please stop lobbying for an exception, whether expressly worded, in footnotes or otherwise! We are talking about the Bulgarian Judges Association, an organisation that has been tirelessly spreading lies that it is a professional association, that it is representative of an entire legal profession. When the provision, as worded and approved by the Legal Affairs Committee, comes into force each magistrate will be required to disclose his or her membership of the organisation concerned. We will then see who the BJA represents and how many members it has. We are not against membership of professional associations in principle, but strongly oppose the lies spread publicly, including before the diplomatic corps in Sofia, by certain professional associations that they represent the entire community of judges.

In light of the developments outlined above, we respectfully request your opinion on whether the recently adopted statutory provisions on the mandatory disclosure by Bulgarian magistrates of their membership of professional associations before the Supreme Judicial Council constitutes a breach of their freedom of association. We also request your opinion, in principle, on whether the conduct of senior officials of the Bulgarian Judicial Council, along with that of representatives of the executive and legislative branches of government, is in line with of principle of respect for the judiciary and its independence in light of recognised international standards.

August 2016

Yours sincerely,

Managing Board of the Bulgarian Judges Association:

Atanas Atanasov – Chair

Vesislava Ivanova – Secretary-General

Stoyan Madin

¹⁷ <http://www.parliament.bg/bg/plenaryst/ns/51/ID/5687>

Nikolay Gunchev

Yordan Damaskinov

Jivko Jelev